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Held at Headquarters, New York, on Wednesday, 10 March 2010, at 10 a.m.

Chairman: Mr. Maurer ..... (Switzerland)
Chairman of the Advisory Committee on Administrative and Budgetary Questions: Ms. McLurg

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The meeting was called to order at 10.10 a.m.

Agenda item 112: Appointments to fill vacancies in subsidiary organs and other appointments (*continued*)

(a) Appointment of members of the Advisory Committee on Administrative and Budgetary Questions (*continued*) (A/64/101/Add.1)

1. **The Chairman** drew attention to document A/64/101/Add.1, which indicated that Mr. Nagesh Singh (India) had resigned from the Advisory Committee on Administrative and Budgetary Questions and that the Government of India had nominated Mr. Anupam Ray, whose candidacy had been endorsed by the Group of Asian States, to complete the unexpired portion of Mr. Singh's term of office. If he heard no objection, he would take it that the Committee wished to recommend the appointment of Mr. Ray to the Advisory Committee for a term of office beginning on the date of appointment and ending on 31 December 2010.

2. *It was so decided.*

3. *Mr. Ray was recommended for appointment to the Advisory Committee on Administrative and Budgetary Questions for a term of office beginning on the date of his appointment and ending on 31 December 2010.*

Agenda item 132: Programme budget for the biennium 2010-2011 (*continued*)

Conditions of service for the ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (A/64/7/Add.20 and A/64/635 and Corr.1)

4. **Ms. Pollard** (Assistant Secretary-General for Human Resources Management), introducing the report of the Secretary-General on conditions of service for the ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (A/64/635 and Corr.1), recalled that the Security Council, by its resolution 1329 (2000), had decided to establish a pool of ad litem judges in the International Tribunal for the Former Yugoslavia and to enlarge the membership of the Appeals Chambers of both Tribunals. The Council had further decided that those judges would serve in the Trial Chambers for one or more trials, for a cumulative period of up to, but not including, three years. In that connection, she noted that three years of uninterrupted service was the minimum term permanent judges were required to serve in order to be eligible for pension benefits.

5. In various resolutions, the Security Council had extended the term of office of the ad litem judges of both Tribunals beyond the maximum cumulative period of three years. As a result, a number of ad litem judges would have served more than three years continuously by the time the Tribunals had completed their work. Such an eventuality had been considered by the General Assembly at its fifty-fifth session. At that time the Advisory Committee on Administrative and Budgetary Questions had suggested that letters of appointment should stipulate that, notwithstanding such a development, the consequential extension of service would not give rise to any additional entitlements or benefits other than those which already existed and which would be extended pro rata by virtue of the extension of service (A/55/806). That principle was reiterated in Security Council resolution 1597 (2005), which stated that there would be no changes in the entitlements or benefits of ad litem judges of the International Tribunal for the Former Yugoslavia with a cumulative period of service of three years or more.

6. In his 2001 and 2006 comprehensive reviews of the conditions of service and the pension benefits of the judges, the Secretary-General had shared the concern of the two Tribunals that the disparity between the pension benefits of the judges of the Tribunals and of the judges of the International Court of Justice had resulted in discrimination against the judges of the Tribunals.

7. At the sixty-third session, the General Assembly had decided that the pension scheme for the Tribunals' judges should remain a defined benefit and non-contributory scheme. Ad litem judges, however, had been excluded from that scheme. The Assembly had further decided that the emoluments, pensions, and other conditions of service of the members of the International Court of Justice and the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda would next be reviewed at its sixty-fifth session, including options for defined benefit and defined contribution pension schemes.

8. By the end of 2010, the majority of ad litem judges would have served for more than three years as a consequence of the policy of giving priority to

continuity in service of ad litem judges in order to achieve the goals of the completion strategies of the Tribunals. The Security Council, in its resolution 1878 (2009), had taken note of the concerns expressed about the terms and conditions of service of ad litem judges. However, it had not been able to take action because the matter was within the purview of the General Assembly.

9. Extending pension benefits to the ad litem judges would be consistent with the extension of their terms of service, as approved by the Security Council in its resolution 1877 (2009). Should the General Assembly decide to extend the pension scheme currently applicable to the permanent judges of the two Tribunals to the ad litem judges with more than three years of continuous service, the related budgetary implications were estimated at $421,300 for the International Criminal Tribunal for Rwanda and $346,566 for the International Tribunal for the Former Yugoslavia, annually.

10. **Ms. McLurg** (Chairman of the Advisory Committee on Administrative and Budgetary Questions), introducing the related report of the Advisory Committee (A/64/7/Add.20), said that, after considering the Secretary-General's report, the Advisory Committee had concluded that, given the differences in the conditions of service of the ad litem and permanent judges of the International Tribunals, it would be most appropriate to consider the matter of pension benefits for the ad litem judges in the context of the wider review of the emoluments, pensions and other conditions of service of the members of the International Court of Justice and the judges of the International Tribunals to be conducted by the General Assembly at its sixty-fifth session.

11. The General Assembly should bear a number of issues in mind. The first was the question of eligibility as it related to length of service. In that connection, the Advisory Committee pointed out that the statutes of both Tribunals did not explicitly disqualify ad litem judges from receiving pension benefits. It was the limitation of service of ad litem judges to a cumulative period of less than three years that had prevented them from becoming eligible for pension benefits. However, since a number of ad litem judges of both Tribunals had now served for cumulative periods in excess of three years, those judges could be eligible for pension benefits, in accordance with the relevant pension scheme regulations.

12. However, it should be pointed out that, in implementation of an earlier recommendation of the Advisory Committee, subsequently endorsed by the General Assembly, all letters of appointment signed by ad litem judges at both Tribunals contained a proviso stipulating that, in the unlikely event that the service of an ad litem judge were to exceed three years, no additional entitlements or benefits, other than those which already existed, would apply.

13. Second, in determining whether the existing pension scheme for permanent judges should be extended to cover ad litem judges, the General Assembly might wish to consider whether, given the changed circumstances of the Tribunals' operations, the differences in the conditions of service of the two categories of judge continued to be justified.

14. Third, with regard to the Tribunals' completion strategies, the Advisory Committee had been informed that, if an ad litem judge were to leave the service of a Tribunal before the completion of the case to which he or she was assigned, a substitute judge could be appointed. Only one such substitution could be made during a hearing; the need for a second substitute would require the case to be reheard from the beginning. That might delay hearings and affect the ability of the Tribunals to complete their work on time. The report of the Secretary-General, however, contained no indication that, should the General Assembly retain the current terms and conditions of service, ad litem judges who had exceeded or would soon exceed the three-year period would resign before the completion of their cases.

15. **Mr. Al-Shahari** (Yemen), speaking on behalf of the Group of 77 and China, said that fairness, equality and justice should be the foundation of every aspect of the Organization's work. The Group therefore commended the Secretary-General for drawing attention to the unfair conditions of service of the ad litem judges.

16. Although the ad litem judges of both International Tribunals had been appointed on the understanding that their cumulative service would not exceed three years, thus making them ineligible for pension benefits, their terms of office had in fact been extended beyond that maximum cumulative period. As a result, some of those judges had served the minimum term permanent judges were required to serve in order to be eligible for pension benefits. The denial of

pension benefits to the ad litem judges was therefore a clear breach of the principles of equality, fairness and justice.

17. Eligibility for pension benefits was governed by the relevant pension scheme regulations. In its report, the Advisory Committee had indicated that, inasmuch as the statutes of both Tribunals did not explicitly disqualify ad litem judges from receiving pension benefits, those judges could be eligible for pension benefits.

18. Nearly three quarters of the ad litem judges of the two Tribunals would have completed three years' cumulative service by the end of 2010. The Group was therefore concerned that continued discrimination against those judges would have an adverse impact on the Tribunals' completion strategies. The differences in the conditions of service of the two categories of judge were no longer justified and should be addressed at the current part of the resumed sixty-fourth session.

19. The Group's position applied strictly to the conditions of service of the ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.

20. **Mr. Coffi** (Côte d'Ivoire), speaking on behalf of the Group of African States, said that the International Criminal Tribunal for Rwanda had made every effort to conduct fair and expeditious trials while conforming to its completion strategy. However, despite those efforts, enormous challenges had made it impossible for the Tribunal to complete its work on time. The Group therefore welcomed Security Council resolution 1878 (2009), whereby the Council had extended the terms of office of some of the Tribunal's permanent and ad litem judges. The adoption of that resolution had enhanced the effectiveness of judicial proceedings and contributed towards the implementation of the completion strategy.

21. The Group noted that, by the end of 2010, the majority of the Tribunal's ad litem judges would have completed three years' cumulative service, which was the minimum term permanent judges were required to serve in order to be eligible for pension benefits. It further noted that the workload of the ad litem judges was identical to that of the permanent judges and that their responsibilities were nearly identical to those of the permanent judges. The Group therefore agreed that the continued differences in the terms and conditions of service between the permanent judges and ad litem judges were no longer justified and should be addressed in the interest of both equity and the successful implementation of the completion strategy.

22. Although the Group welcomed the General Assembly's decision to review the emoluments, pensions and other conditions of service of the members of the International Court of Justice and the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda at its sixty-fifth session, it was imperative to address the issue of the conditions of service of the ad litem judges of the International Criminal Tribunal for Rwanda at the first part of the resumed sixty-fourth session.

Revised estimates relating to the programme budget for the biennium 2010-2011 under sections 28C, 28D and 36 related to the Emergency Preparedness and Support Unit (A/64/7/Add.22 and A/64/662)

23. **Ms. Pollard** (Assistant Secretary-General for Human Resources Management), introducing the revised estimates relating to the programme budget for the biennium 2010-2011 under sections 28C, 28D and 36 related to the Emergency Preparedness and Support Unit (A/64/662), said that, as demonstrated by the disasters in Haiti, Kabul, Algiers and Baghdad, the increased risk to United Nations staff resulting from malicious acts, natural disasters and other emergencies required a proactive, comprehensive and coordinated ongoing support system for survivors of such incidents, as well as families affected by the injury or death of a loved one in the service of the United Nations.

24. An internal review had found that the Organization's capacity to respond to emergencies was limited and there was no consistent contact point to address the needs of affected persons. That was particularly true in the medium and long term. Staff members engaged in offering support were often untrained or inadequately equipped to navigate the complex administrative system they faced in meeting the needs of survivors and their families.

25. On the basis of that review and the lessons learned from major incidents over the past seven years, the Secretary-General proposed to establish a dedicated emergency preparedness and support unit in the Office of the Assistant Secretary-General for Human Resources Management in order to provide short-,

medium- and long-term support to survivors and the families of those who had perished or were injured as a result of a malicious act, natural disaster or other emergency.

26. The resource requirements for the proposed unit for the biennium 2010-2011 amounted to $3,145,100 gross ($2,941,300 net), and included the proposed establishment of eight new posts (1 D-1, 1 P-5, 2 P-4, 1 P-3, 2 P-2 and 1 General Service (Other level)).

27. Although initial emergency response would remain the responsibility of the affected entity, the proposed unit would provide coordinated and complementary assistance in emergencies.

28. At present, approximately 10 cases related to the Baghdad bombing and approximately 20 cases related to the Algiers bombing were ongoing. With regard to the latter, the Organization was actively working to settle claims related to medical expenses and make determinations regarding, inter alia, permanent loss of function or disability and special sick leave credit. The Office of Human Resources Management lacked the capacity to address those cases and those of approximately 45 other staff members.

29. She anticipated that, as a result of the Haiti earthquake, the Advisory Board on Compensation Claims and the United Nations Claims Board would receive numerous requests to determine compensation under appendix D to the Staff Rules, which governed compensation in the event of death, injury or illness attributable to the performance of official duties. Such compensation would require monitoring and ongoing adjustment of the benefits paid. There would be cases in which support was required several weeks or months following a disaster or an emergency. The family members of individuals who had been kidnapped or taken hostage would also require assistance from the Organization.

30. Following the incidents in Baghdad and Algiers, the Organization had focused its attention on responding to the needs of the survivors and of their families. The Working Group on Staff Humanitarian Affairs had been re-established in order to consider how the United Nations could respond in a more caring and consistent way in the wake of malicious attacks against the Organization. The recommendations of the Working Group were reflected in the proposal before the Committee.

31. **Ms. McLurg** (Chairman of the Advisory Committee on Administrative and Budgetary Questions), introducing the related report of the Advisory Committee (A/64/7/Add.22), said that communication and coordination on emergency preparedness, both within the Office of Human Resources Management and between that Office and other Secretariat entities, were of fundamental importance. The Advisory Committee was therefore concerned that the establishment of a separate structure would add another layer of bureaucracy. Consequently, the Advisory Committee recommended against the establishment of the proposed emergency preparedness and support unit.

32. Nevertheless, the Advisory Committee supported a limited strengthening of certain functions within the existing structure of the Office of Human Resources Management and had therefore recommended approval of a number of temporary posts pending the submission of a more elaborated proposal as part of the proposed programme budget for the biennium 2012-2013. Any additional needs for the biennium 2010-2011 should be met from within existing capacity in the Office of Human Resources Management.

33. The Advisory Committee recognized the need to strengthen the Organization's ability to respond to the needs of victims and survivors; however, that should be based on a more systematic analysis of the existing capacities of the Secretariat that were engaged in related activities, such as disaster recovery, business continuity and critical incident stress management, and should include exploring and building on complementarities. In the light of that analysis, a careful assessment of the scope of activities should be undertaken. Greater attention should be given to cooperation and collaboration with United Nations agencies, funds and programmes, including the possibility of cost-sharing arrangements, as well as to the utilization of voluntary support provided by Member States.

34. The Advisory Committee recommended the appropriation of an additional amount of $1,571,800 for the biennium 2010-2011, or a reduction of $1,573,300 in the Secretary-General's proposal. The amount of $1,571,800 would represent a charge against the contingency fund.

35. **Mr. Al-Shahari** (Yemen), speaking on behalf of the Group of 77 and China, said that the Group

attached great importance to the well-being of all international civil servants and peacekeepers. United Nations staff had suffered enormous loss of life as a result of natural disasters and had become targets of increasing violence and malicious acts.

36. The Group agreed with the Secretary-General that the increased risk to United Nations staff demanded a proactive, comprehensive and coordinated ongoing support system for the survivors of such incidents and for their families. It was concerned that the Organization currently lacked a unique contact point to address the needs of survivors or affected families, and that the support provided was offered on an ad hoc basis and as an additional function by staff members who were engaged in other roles and responsibilities. With regard to the disaster in Haiti, the Group would seek further information on the Secretariat's interactions with affected families, as well as the special allowances and other measures taken to help United Nations staff and peacekeepers rest and recover after the earthquake.

37. The Group supported the establishment of the proposed emergency preparedness and support unit as the initial step in a more comprehensive effort and looked forward to learning of additional measures to enhance the Organization's capacity to assist staff members in emergencies or disasters, including the provision of long-term support to victims and their families. In that connection, the Medical Services Division should be strengthened as a matter of urgency.

38. Its support for the establishment of the proposed unit notwithstanding, the Group pointed out that the report could have included a more systematic analysis of the existing capacities of the Secretariat that were engaged in related activities. Greater attention should have been given to cooperation and collaboration with United Nations agencies, funds and programmes with a presence in the field.

39. **Mr. Hameed** (Pakistan) said his delegation was concerned by the increased risk to United Nations staff resulting from malicious acts, natural disasters and other emergencies. The loss of even one life demanded urgent action by the Committee. His delegation wished to honour United Nations staff members for their devoted service to the Organization, despite the threat to their personal safety, and to pay tribute to those who had sacrificed their lives for the sake of peace, including the more than 100 Pakistani peacekeepers who had died in the line of duty since the 1960s.

40. His delegation supported the establishment of the proposed emergency preparedness and support unit and looked forward to the Secretary-General's report on other requirements associated with provision of assistance and support to staff members, including assistance related to education for dependent children and travel for families of the deceased and survivors to memorial ceremonies and funerals and to places of evacuation.

41. Although his delegation, in principle, supported enhancing the emergency preparedness of the United Nations, the report should have included a more systematic analysis of the existing capacities of the Secretariat that were engaged in related activities, such as disaster recovery, business continuity and critical incident stress management.

Safety and security

42. **Mr. Yamazaki** (Controller) recalled that, in a letter dated 9 December 2009 from the Secretary-General to the President of the General Assembly and subsequently transmitted to the Chairman of the Committee (A/C.5/64/10), the Secretary-General had indicated his intention to utilize $7,866,700 out of the budget for the United Nations Assistance Mission in Afghanistan (UNAMA) to meet the most highly prioritized security requirements on an immediate basis for the period from 1 January to 30 April 2010.

43. The letter had also indicated that a formal, full and more stable funding proposal would be presented at the first part of the resumed sixty-fourth session, after an in-depth analysis of the United Nations position and security-related requirements in Afghanistan and other countries had been completed.

44. The Secretariat was not yet in a position to provide a detailed proposal for Afghanistan and other high-threat locations because there had not been sufficient time to examine the security enhancement options available. The Secretariat also needed to consult with agencies, funds and programmes on the proposals and to gain their agreement on the jointly financed funding portion where services or facilities were not funded by the regular budget.

45. The Secretariat intended to submit an analysis of security requirements for UNAMA to the General

Assembly at the second part of its resumed sixty-fourth session as part of the UNAMA progress report, as requested by the General Assembly in its resolution 64/245 on the recommendation of the Advisory Committee (A/64/7/Add.13). UNAMA was implementing the urgent and necessary security enhancements from its established budget for 2010. The Department of Safety and Security was working with agencies, funds and programmes in Afghanistan to ensure they were addressing their identifiable needs within their budgets.

46. With regard to other high-threat locations, the Secretariat intended to provide a proposal for security enhancements at the sixty-fifth session of the General Assembly, including funding proposals with regard to cost-sharing with agencies, funds and programmes. The Department of Safety and Security would continue to fund urgent requirements for other high-threat locations from within its existing budget and liaise with agencies, funds and programmes with regard to funding the requirements for their staff and premises.

Agenda item 142: Administration of justice at the United Nations (*continued*) (A/C.5/64/16)

47. **Ms. McLurg** (Chairman of the Advisory Committee on Administrative and Budgetary Questions) said that, in a letter dated 8 February 2010 from the Secretary-General to the President of the General Assembly (A/64/664) and subsequently transmitted on 4 March 2010 to the Chairman of the Fifth Committee (A/C.5/64/16), the Secretary-General had requested the General Assembly to consider extending by 12 months the terms of service of three ad litem judges of the United Nations Dispute Tribunal. After reviewing the Secretary-General's request, the Advisory Committee had no objection to extending the terms of service of those judges for the period deemed necessary but not longer than one year.

48. The Advisory Committee noted that, according to the Secretary-General, the resource requirements would be funded under the provisions of section III of General Assembly resolution 60/283, which had been extended until 30 April 2010 by the Assembly, under paragraph 142 of its resolution 64/243. It should be noted that the provisions of paragraph 142 of resolution 64/243 would expire prior to the commencement on 1 July 2010 of the extension of the three ad litem judges.

49. Upon enquiry, the Advisory Committee had been informed that the level of resource requirements for clearing the backlog of cases was estimated at $2,038,200 for the biennium 2010-2011. That figure included compensation for the three ad litem judges serving in Geneva, Nairobi and New York, as well as costs related to support staff for a period of one year, effective 1 July 2010.

50. The Advisory Committee noted from the Secretary-General's letter that the Secretariat would conduct a review of the new system of administration of justice and report to the General Assembly at its sixty-fifth session. The Advisory Committee's concurrence with the request for an extension should in no way prejudge the outcome of the upcoming review.

51. **Mr. Al-Shahari** (Yemen), speaking on behalf of the Group of 77 and China, said that the Group was concerned that the Secretary-General had initially submitted his proposal to extend the terms of service of three ad litem judges of the United Nations Dispute Tribunal directly to the General Assembly. It was further concerned that action had been taken with the apparent intention of bypassing consideration of the issue by the Committee under the pretence that the resources required for the proposal could be allocated under the experimental arrangement whereby the Secretary-General was allowed to exercise limited budgetary discretion. In that connection, he noted that the Committee had yet to decide whether to extend that arrangement.

52. General Assembly resolution 63/253, which defined the duration of service of ad litem judges, had been adopted by the Assembly on the recommendation of the Committee. Any decision to extend the duration of service must therefore be approved by the Committee, regardless of how such an extension was financed. In that connection, the Group wished to reiterate that the Committee was the appropriate Main Committee of the General Assembly entrusted with responsibilities for administrative and budgetary matters. The Group was deeply concerned by the Secretary-General's attempt to use his limited budgetary discretion to fund activities that were not mandated by the General Assembly.

53. However, despite its concerns, the Group supported the reforms to the system of administration of justice at the United Nations, which had been approved by the General Assembly in its resolutions

61/261, 62/228 and 63/253. It looked forward to learning the results of the comprehensive review of the new system at the Assembly's sixty-fifth session.

54. The United Nations Dispute Tribunal should have the capacity to manage cases from the old system and new ones. Despite the unfortunate manner in which the Secretary-General's request had reached the Committee, the substance of that request had merit in view of the considerable workload of the Tribunal.

The meeting rose at 11.15 a.m.